

IN THE  
INDIANA SUPREME COURT

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No. 49A02-1201-MI-1

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CHARLES WHITE, <i>in his personal</i>	)	Appeal from the
<i>capacity</i> , THOMAS E. WHEELER,	)	Marion Circuit Court,
BERNARD L. PYLITT, and GORDON	)	
DURNIL, <i>in their official capacities</i>	)	
<i>as members of the</i> INDIANA	)	
RECOUNT COMMISSION,	)	
Appellants,	)	No. 49C01-1012-MI-55881,
	)	
v.	)	
	)	
INDIANA DEMOCRATIC PARTY,	)	
<i>by its chairman</i> , DANIEL J. PARKER,	)	Hon. Louis Rosenberg,
Appellee.	)	Judge.

**INDIANA RECOUNT COMMISSION'S  
VERIFIED MOTION TO TRANSFER JURISDICTION OF APPEAL  
BEFORE CONSIDERATION BY THE COURT OF APPEALS**

The Appellant members of the Indiana Recount Commission (“the Commission”)<sup>1</sup> respectfully move this Court to transfer jurisdiction of this appeal from the Court of Appeals pursuant to Indiana Appellate Rule 56(A). In support of this motion, the Commission states as follows:

1. This case involves the Indiana Democratic Party’s (“the Party”), through its Chairman, Daniel Parker, petition for an election contest made to the Indiana Recount Commission seeking a declaration that Charles White is ineligible to have

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<sup>1</sup> The Commission members are Chairman Thomas E. Wheeler, Bernard L. Pylitt, and Gordon Durnil. The Attorney General represents the members of the Commission in their official capacities. Secretary White is a party to this case in his personal capacity only and is represented by David M. Brooks.

been a candidate in the 2010 general election for Secretary of State on the theory that White was not properly registered to vote.

a. The Commission initially dismissed the Party's petition in pertinent part because the statutory prerequisite for candidacy is being registered to vote, while the Party alleged not that White was unregistered, but rather that White's registration was no longer "legal" due to his having moved his residence without amending his voter registration.

b. The Party sought judicial review of that dismissal on December 30, 2010, and on April 7, 2011, the Marion Circuit Court granted relief, finding that state law implicitly requires that candidates for office be "legally" registered to vote and directed the Commission hear the Party's petition on remand. The Commission and White separately appealed, this Court granted transfer, and dismissed the appeal because the judicial review court's judgment was not final.

c. On remand, the Commission heard the petition and conducted an evidentiary hearing on June 21, 2011. On June 28, 2011, the Commission entered findings of fact and conclusions of law and unanimously denied the election contest on the grounds that White was lawfully registered at all relevant times.

d. The Party filed a second petition for judicial review on July 28, 2011. On December 22, 2011, the judicial review court reversed the Commission's decision and directed it to declare White as having been

ineligible to be a candidate for Secretary of State and certify Vop Osili, the runner-up in the election, as having been elected. The judicial review court stayed its judgment pending appeal on January 4, 2012.

e. White filed a notice of appeal with the clerk of the judicial review court on December 23, 2011. It was assigned cause number 49A02-1112-MI-1154. The Commission filed a notice of appeal with the Clerk of this Court on January 3, 2012, which was assigned cause number 49A02-1201-MI-1.

2. Transfer of a case to this Court before consideration by the Court of Appeals is permitted under Indiana Rule of Appellate Procedure 56(A) when (1) the appeal involves a substantial question of law of great public importance, and (2) an emergency exists requiring speedy determination. Both of these circumstances exist in this case.

3. All involved parties—the Party, Secretary White, the Commission, the Circuit Court, and the public—likely agree that this case presents an emergency requiring this Court’s speedy determination of the important legal questions needed to be correctly and finally decided before a person elected to statewide office is removed due to an election contest. This appeal will be brought to the Court following a decision by the Court of Appeals, Counsel estimates that having the appeal proceed first to the Court of Appeals would add about 6 months to the time for a final resolution should the Court transfer jurisdiction in the normal course. Even with a stay of the judgment below and no matter what the ultimate outcome

of this appeal, the candidates, the Commission, and—most importantly—the public, require as speedy a determination of the issues as can be reasonably accomplished so that this important matter may be timely concluded and confidence restored.

4. In addition to its urgent nature, this case presents substantial questions of law of great public importance over which the Commission—the expert agency charged with interpreting and implementing the law of election contests—and the Circuit Court have disagreed. The issues likely to be raised in this appeal include the scope of authority possessed by the Commission to dismiss election contest petitions for failing to satisfy the statutory pleading requirements; what the phrase “registered to vote” in Indiana Code Section 3-8-1-1(b) entails; and the limits of the Commission’s discovery powers and whether a judicial review court has the authority to supervise the Commission’s discovery before the election contest is resolved.

5. This case and the questions that it poses are of great public importance because their answers will decide whether Secretary White is removed from office—a profound decision that may invalidate the results of an election decided by a wide margin. On the other hand, should the law require that Secretary White be declared ineligible, Mr. Osili will have been unnecessarily further delayed in assuming office. In either scenario, prompt resolution by this Court of the Commission’s arguments regarding the Circuit Court’s judgment is necessary so that the public can be confident that the Commission will be applying the proper legal standards in adjudicating the election contest. *Bayh*, 521 N.E.2d at 1314

(granting transfer before consideration by the Court of Appeals in a dispute over a gubernatorial candidate's eligibility to stand for election).

6. The Commission understands that the Party has filed a separate Motion to Transfer and Consolidate Appeals in Secretary White's appeal (No. 49A02-1112-MI-1154); the Commission does not object to consolidation of this case with Secretary White's appeal or with transferring that appeal to this Court. Undersigned counsel further understands that the other parties have no objection to immediate transfer being granted.

7. The Commission also believes that this case warrants an expedited briefing schedule and consideration, but will defer to the Court as to the appropriate schedule. Because the Secretary's Office has significant responsibility for the administration of elections, this controversy should be resolved promptly so that it will have limited impact on the administration of this year's elections. Undersigned counsel believes that the transcript requested in this appeal is either completed or will be completed shortly; if the Court desires a significantly compressed schedule, completion of the record should be able to be accomplished in very short order.

8. I affirm under the penalties for perjury that the foregoing representations are true.

WHEREFORE, the Indiana Recount Commission respectfully requests this Court to transfer jurisdiction of this case before consideration by the Court of Appeals and for all other appropriate relief.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I do hereby certify that a copy of the foregoing has been duly served upon the parties of record listed below, both by electronic mail and first-class U.S. Mail, on January 9, 2012:

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